No. 89-1714

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

HARRIET PAULEY, SURVIVOR OF JOHN C. PAULEY,
Petitioner
v.
BETHENERGY MINES, INC. and
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF OF AMICUS CURIAE UNITED MINE WORKERS OF AMERICA IN SUPPORT OF CLAIMANT PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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STATEMENT OF INTEREST

The United Mine Workers of America ("UMWA") represents over 200,000 working, retired and laid-off coal miners throughout the United States and Canada. The UMWA was a primary force in the adoption of the Federal Black Lung Benefits Reform Act of 1977 ("1977 Reform Act"), which established the criteria for eligibility for black lung benefits at issue in this case.[1]

[1] *See, e.g.*, Comments of James L. Weeks, UMWA Consultant, H. Rep. No. 151, 95th Cong., 1st Sess. 30-38; Letter from UMWA President Arnold Miller, 123 Cong. Rec. 24,775 (1977); Letter from Director of UMWA Department of Occupational Health Dr. Lorin

The UMWA is filing this amicus brief because the decision below deprives miners of the benefits Congress conferred on them in passing the 1977 Reform Act and because the outcome of this case will have profound effects on both the UMWA's membership and coal miners in general. The ruling here will directly affect thousands of black lung claimants and as a practical matter will determine whether many of them will receive benefits. Very frequently black lung benefits make the difference between a recipient living at a bare subsistence level or with some minimal degree of comfort and security.[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

The legislative process which culminated in the Black Lung Benefits Reform Act of 1977 was dominated by a confrontation between two interest groups: the coal industry and the coal miners. The deal which Congress finally struck and enacted into law represented a carefully wrought and delicately balanced compromise between these two competing interests. Congress chose to reject the miners' request for entitlement based solely on years of service and to grant industry its demand that the Department of Labor be authorized to develop stricter criteria for benefit eligibility for future claims. As *quid pro quo*, Congress granted the miners whose claims were still pending or to be reviewed the benefit of the liberal eligibility criteria established by the Department of Health, Education and Welfare ("HEW").

The court below refused to enforce the compromise which Congress enacted into law and instead applied

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Kerr, 123 Cong. Rec. 24,637-24,638 (1977); Letter from UMWA Staff Attorney Gail Falk, 123 Cong. Rec. 24,636-24,637 (1977). *See also*, H. Rep. No. 151, 95th Cong., 1st Sess. 8, 89 (1977); S. Rep. No. 209, 95th Cong., 1st Sess. 13 (1977).

[2] The total household income from all sources for miner recipients is only $11,740 and for widow recipients is $8,170. U.S. Department of Labor Employment Standards Administration, *A Sample Survey of All Sources of Both Monetary and Non-Monetary Income of Black Lung Beneficiaries* 17 (1983).

criteria more restrictive than HEW's to a claimant to whom Congress had awarded the benefit of the HEW criteria. In doing so, the court below substituted its own policy judgment for that of Congress, usurped the prerogative of the legislature, and in effect repealed a statutory provision enacted by the representatives of the people, all in abject derogation of its constitutional responsibilities.

ARGUMENT

THE COURT BELOW ERRED BY REFUSING TO APPLY THE COMPROMISE CONGRESS ENACTED INTO LAW WITH PASSAGE OF THE BLACK LUNG BENEFITS REFORM ACT OF 1977.

I. ENACTMENT OF THE 1977 ACT CONSTITUTED A LEGISLATIVE COMPROMISE WHICH AWARDED MINERS WHOSE CLAIMS WERE STILL PENDING OR TO BE REVIEWED THE BENEFIT OF THE LIBERAL ELIGIBILITY CRITERIA ESTABLISHED BY THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE ("HEW"), AND AWARDED INDUSTRY WITH THE BENEFIT OF STRICTER CRITERIA WITH RESPECT TO FUTURE CLAIMANTS AND WITH THE REJECTION OF A PROPOSAL TO GRANT MINERS BENEFITS BASED SOLELY ON THE NUMBER OF YEARS THEY WORKED IN THE MINES.

The passage of the Black Lung Benefits Reform Act of 1977 marked the culmination of a lengthy and fiercely contested battle over how best to reform the federal black lung benefits program.

Congress was torn between the demands of miners to be adequately compensated for disabilities they incur in the process of helping the nation meet its energy needs, and the demands of the coal industry that miners who are not totally disabled due to coal mine employment not receive compensation.

In the course of this debate, both the Senate and the House considered the fact that many deserving miners

were being denied benefits. S. Rep. No. 209, 95th Cong., 1st Sess. 17 (1977) ("it is clear to the Committee . . . that many disabled miners' claims have been denied"); H. Rep. No. 151, 95th Cong., 1st Sess. 5 (1977) (it was immediately apparent that a majority of miners whose claims had been denied who appeared before the Subcommittee were severely and dramatically handicapped by respiratory difficulties).

The eligibility criteria set forth in regulations were offered as one reason why worthy claimants were being denied benefits. At the time the 1977 Reform Act was being debated, two different sets of criteria were being applied to claims. Claims filed under Part B of the program, i.e., before July 1, 1973, were judged by interim standards established by the U.S. Department of Health, Education, and Welfare ("HEW"), while claims filed under Part C, i.e., on or after July 1, 1973, were evaluated under permanent standards set by the U.S. Department of Labor ("DOL"). The House Committee studied the difference between the two standards and concluded that the DOL standards—compared to HEW's—were rigid, difficult, and much more demanding. H. Rep. No. 151, 95th Cong., 1st Sess. 15 (1977).

The original House Bill, as well as its predecessors, proposed to solve the problem of deserving miners being denied benefits by establishing an automatic entitlement to benefits for miners with a certain number of years of service in the mines and by giving all other claimants the benefit of the more liberal HEW criteria. H.R. 4544, 95th Cong., 1st Sess. §§ 2(a), 7 (1977).

The coal industry strenuously objected to awarding benefits on the basis of years of service, on the grounds that it would allow miners who were not actually disabled to receive benefits. *See*, Minority Views, H. Rep. No. 151, 95th Cong., 1st Sess. 73 (1977). ("We cannot . . . support automatic entitlements based exclusively on years in the mines. While it is true that most coal miners with 25 years are likely to have some coal dust in their lungs,

there is no evidence that they all have or will contract totally disabling pneumoconiosis"). The industry called for research into and enactment of more restrictive criteria to ensure that miners who are not totally disabled due to pneumoconiosis are not awarded benefits. *See Ibid.* at 76. (Given medical and scientific research regarding disability associated with black lung, government should be allowed to apply criteria more restrictive than HEW's).

In response to these objections, the House adopted a substitute offered by Representative Thompson. The Thompson Compromise, as it came to be known, omitted the automatic entitlement provisions but preserved the requirement that claimants receive the benefit of the more liberal HEW criteria:

> With respect to a claim filed after June 30, 1973, [the] regulations [applying to such claims] shall not provide more restrictive criteria than those applicable to a claim filed on June 30, 1973 [the HEW criteria].

H. Rep. No. 151, 95th Cong., 1st Sess. 52 (1977).

The language requiring application of the liberal HEW criteria was viewed as compensating for the elimination of the automatic entitlement provision:

> The Section . . . on medical standards will make it easier for miners to demonstrate that they have the disease, and thus to some extent serve the purpose which was to have been fulfilled by the provision establishing the "irrebuttal presumption" based on length of service, which was dropped from the substitute. This Section mandates that . . . standards be applied to Part C—which are no more stringent than the "interim" [HEW] standard which are applicable to Part B claims . . .

123 Cong. Rec. 29,847 (1977) (Statement of Rep. Ammerman).

Many Representatives supported the Thompson compromise in spite of their belief that it did not go far

enough to ensure that deserving miners got benefits. *See* 123 Cong. Rec. 29,840 (1977) (Statement of Rep. Wampler); 123 Cong. Rec. 29,848-29,849 (1977) (Statement of Rep. McDade). But they recognized that the very nature of the legislative process requires compromise:

> We must all remember that legislation is the art of compromise.

123 Cong. Rec. 29, 835 (1977) (Statement of Rep. Flood).

> The Thompson . . . substitute represents a compromise, which may be the best possible legislation to aid the coal miners that can win approval of the Congress . . .

123 Cong. Rec. 29,840 (1977) (Statement of Rep. Wampler).

> This legislation is the product of a great deal of compromise which has become necessary in order to make some very basic improvements to existing law . . . It represents our best efforts to provide simple justice to a small group of Americans who have nowhere else to turn to for relief.
>
> * * * *
>
> These provisions are far from perfect, and I worked for, supported, and would support today the Committee bill. But there must be compromise.

123 Cong. Rec. 29,848 (1977) (Statement of Rep. McDade).

In contrast to the Thompson substitute passed by the House, the Senate Committee, and ultimately, the entire Senate, rejected the requirement that claimants receive the benefit of the more liberal HEW criteria on the grounds that they were "not qualified to assess the appropriateness . . . of standards." S. Rep. No. 209, 95th Cong., 1st Sess. 13 (1977). The Senate Bill authorized DOL to promulgate and apply standards stricter than HEW's.

Because of this dispute over appropriate eligibility criteria, as well as other differences between the House and

Senate version, the Conference Committee required detailed negotiations to arrive at a compromise. *See* 124 Cong. Rec. 3,429 (1978) (Statement of Rep. Thompson). Accommodation of the competing claims made by miners and the industry was a lengthy process:

> The conferees have worked for nearly four months to develop this report. Although both House and Senate conferees worked toward the same objective, there were serious differences in approach. This conference report represents an accommodation of those differences.

124 Cong. Rec. 2,333 (1978) (Statement of Sen. Williams).

The Bill finally reported out by the Conference Committee represented a compromise on the issue of eligibility criteria. Instead of giving all claims the benefit of the HEW criteria, the final law authorized DOL to make and apply stricter criteria, but required pending and reviewed claims to be judged by the more liberal HEW criteria:

> (1)(D) the Secretary of Labor, in consultation with the Director of the National Institute for Occupational Safety and Health, shall establish criteria for all appropriate medical tests under this subsection which accurately reflect total disability in coal miners as defined in subparagraph (A).
>
> (2) Criteria applied by the Secretary of Labor in the case of—
>
> > (A) any claim which is subject to review by the Secretary of Health, Education, and Welfare, or subject to a determination by the Secretary of Labor, under section 435(a);
> >
> > (B) any claim which is subject to review by the Secretary of Labor under section 435(b); and
> >
> > (C) any claim filed on or before the effective date of regulations promulgated under this subsection by the Secretary of Labor;

shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, whether or not the final disposition of any such claim occurs after the date of such promulgation of regulations by the Secretary of Labor.

H.Rep. No. 864, 95th Cong., 2d Sess. 2 (1978). It was this compromise which became law. 30 U.S.C. § 902(f).

Thus, industry was awarded with rejection of the automatic entitlement proposal and authorization of DOL to enact stricter criteria, while miners were awarded the benefit of the more liberal HEW criteria until DOL promulgated new ones.

II. THE ELIGIBILITY CRITERIA WHICH HEW APPLIED TO CLAIMS IN 1977 DID NOT PERMIT REBUTTAL OF THE PRESUMPTON OF ELIGIBILITY INVOKED BY A CLAIMANT WHO SATISFIED MEDICAL TEST REQUIREMENTS ON THE GROUNDS THAT HIS DISABILITY WAS NOT CAUSED BY PNEUMOCONIOSIS.

The criteria which HEW applied to claims in 1977 included a presumption. Under this presumption, a miner was presumed to be totally disabled and to be disabled due to pneumoconiosis if he met any one of several medical test requirements. 20 C.F.R. § 410.490(b). The presumption could be rebutted only by evidence that the miner is doing, or capable of doing work comparable to his coal mine work:

> (c) *Rebuttal of presumption.* The presumption in paragraph (b) of this section may be rebutted if:
>
> (1) There is evidence that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see § 410.412(a)(1)), or
>
> (2) Other evidence, including physical performance tests (where such tests are available and their administration is not contraindicated), establish that the individual is able to do his usual coal mine work or comparable and gainful work.

20 C.F.R. § 410.490(c).

The criteria DOL applied to the case at bar also contains a presumption of total disability due to pneumoconiosis. 30 C.F.R. § 727.203(a). These criteria permit rebuttal not only on the grounds that the miner is doing or capable of doing work comparable to his coal mine work, but also on the grounds that the miner is not disabled and that the miner's disability is not caused by pneumoconiosis:

> (b) *Rebuttal of interim presumption.* The presumption in paragraph (a) of this section shall be rebutted if:
>
> (1) The evidence establishes that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see § 410.412(a)(1) of this title), or
>
> (2) In light of all relevant evidence it is established that the individual is able to do his usual coal mine work or comparable and gainful work (see § 410.412(a)(1) of this title), or
>
> (3) The evidence establishes that the total disability or death of the miner did not arise in whole or in part out of coal mine employment; or
>
> (4) The evidence establishes that the miner does not, or did not, have pneumoconiosis.

30 C.F.R. § 727.203(b).

The court below permitted the HEW presumption to be rebutted on the grounds that the claimant's disability was not caused by pneumoconiosis. *Bethenergy Mines, Inc. v. Director*, 890 F.2d 1295, 1302 (3rd Cir. 1989). The court based this ruling on the premise that the HEW regulation allows this category of rebuttal. *Ibid.* But the text of the HEW regulation—unlike the DOL regulation—omits any mention of a disability causation rebuttal.

That the HEW presumption did not permit rebuttal on the grounds of disability causation is also demonstrated by the fact that even though HEW applied its criteria in over 400,000 decisions, respondents *cannot produce one single* decision by HEW in which it per-

mitted rebuttal on the grounds that the miner's disability was not caused by pneumoconiosis. U.S. Department of Labor, *1976 Annual Report On The Black Lung Benefits Act* 4 (1977); U.S. Department of Labor, *1978 Annual Report On The Administration Of The Black Lung Benefits Act* 21 (1979).

Indeed, the Comptroller General of the United States has confirmed that it was HEW's policy to grant benefits even if the claimants' disability was not caused by pneumoconiosis:

> [HEW] experienced difficulties in determining if miners' disabilities or deaths were due to black lung rather than to one or more other conditions. GAO believes that [HEW's] policy to attribute disabilities or deaths to black lung in virtually all such cases has provided equitable treatment to all eligible claimants but has probably resulted in awarding benefits to claimants who were not totally disabled due to black lung and to claimants whose husbands did not die due to the disease.
>
> * * * *
>
> In establishing eligibility criteria for black lung disability claims, [HEW] was faced with a dilemma, that is, whether it should award or deny benefits to disabled miners who are afflicted with simple [pneumoconiosis] as well as with one or more other conditions which may be the cause of their disabilities. [HEW] officials advised us that their policy to award benefits in all such cases was based on an inability to medically determine if miners' disabilities were due to simple [pneumoconiosis] or to one or more other conditions. The officials believed that—under the circumstances—resolving the problem in favor of the claimants was the only reasonable decision that could have been made.

U.S. Comptroller General, *Report to the Congress: Achievements, Administrative Problems and Costs In Paying Black Lung Benefits To Coal Miners And Their Widows* 3, 33-34 (1972).

III. THE COURT BELOW DENIED CLAIMANTS THE BENEFITS OF THE LEGISLATIVE COMPROMISE BY PERMITTING REBUTTAL OF THE PRESUMPTION OF ELIGIBILITY INVOKED BY A CLAIMANT WHO SATISFIED MEDICAL TEST REQUIREMENTS ON THE GROUNDS THAT HIS DISABILITY WAS NOT CAUSED BY PNEUMOCONIOSIS.

The court below held that DOL could apply criteria more restrictive than HEW's to claims covered by 30 U.S.C. § 902(f)(2). *Bethenergy Mines, Inc. v. Director, OWCP*, 890 F.2d 1295, 1301 (3rd Cir. 1989). In doing so, the Court ignored the plain meaning of § 902(f)(2), which specifically—and without qualification or limitation—provides that criteria governing such claims "shall not be more restrictive" than HEW's criteria. Under the guise of statutory interpretation, the court rewrote the 1977 Reform Act as if the § 902(f)(2) provision had never been enacted into law, as if the Senate version rather than the House version of § 902 had prevailed in conference, and as if the Senate Bill rather than the House Bill had been enacted into law. By so doing, the court below undid the hard-fought and delicately balanced compromise which Congress struck between competing views of how best to reform the black lung program.

This Court has repeatedly ruled that statutory language must not be construed in a manner which is inconsistent with the bargain chosen by Congress:

> We must respect the compromise embodied in the words chosen by Congress. It is not [the judiciary's] place simply to alter the balance struck by Congress . . . by favoring one side or the other in matters of statutory construction.

Mohasco Corp. v. Silver, 447 U.S. 807, 826 (1980). *Accord, Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 11 (1968) ("the language of [an] Act in its final form is a compromise and . . . the views of those who sought the most restrictive wording cannot control interpretation of the compromise version"); *Community For Creative Non-Violence, et al. v. Reid*, 490 U.S. 730, n.14 (1989)

("strict adherence to the language and structure of an act is particularly appropriate where, as here, a statute is the result of a series of carefully crafted compromises"). *See also, Morrison-Knudsen Construction Co. v. Director, Office of Workers' Compensation Programs*, 461 U.S. 624 (1983).

With the exception of the instant case, the Courts of Appeal have consistently declined invitations to overturn or modify legislative compromises under the guise of interpretation. As the Fifth Circuit explained it:

> However inconsistent we may think this disparate treatment, however much we may be of the view that we could tidy up the statute and make of it what to us seems to be more sense, it is simply not part of our function as judges to re-write, in the guise of statutory construction . . . statutory language in order to cure what to us seems to be statutory deficiencies.

United States v. M/V Big Sam, 693 F.2d 451, 455 (5th Cir. 1982), *cert. denied*, 462 U.S. 1132 (1983). *Accord, Palmer v. Liggett Group, Inc.*, 825 F.2d 620, 626 (1st Cir. 1987) (State tort action is preempted by Congressional compromise reached after hard-fought, bitterly partisan battle since such an action would disrupt the balance Congress carefully wrought and calibrated); *In Re Timbers of Inwood Forest Associates, Ltd.*, 808 F.2d 363, 370 (5th Cir. 1987), *aff'd*, 484 U.S. 365 (1988) (the role of the courts is to effectuate provisions already enacted and not to anticipate compromises among competing interests which may emerge in the course of reform legislation in the future); *United States v. Tex-La Elec. Co-op.*, 693 F.2d 392, 404 (5th Cir. 1982) (court is required to enforce the compromise reached by Congress even though it was drafted 'not . . . as happily as it might have been"); *Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 311 (7th Cir. 1986) ("Legislation is compromise . . . it is . . . necessary to find the compromise to learn the meaning of the statute"); *Brach v. Amoco Oil Co.*, 677 F.2d 1213, 1225 (7th Cir. 1982) (declining

to disregard congressional compromise because courts "do not sit in judgment of Congress' chosen scheme"); *Funbus Systems, Inc. v. C.P.U.C.*, 801 F.2d 1120, 1129 (9th Cir. 1986) ("we refuse to countenance . . . an 'end run' around the compromise negotiated in the . . . Act"); *American Mining Congress v. U.S.E.P.A.*, 824 F.2d 1177, 1187 (D.C. Cir. 1987) (courts should be loathe to tear asunder the process of legislative compromise).

Indeed, the Third Circuit itself—in another case—has acknowledged that it "is not at liberty" to disregard legislative compromise. *Walck v. American Stock Exchange, Inc.*, 687 F.2d 778, 793 (3rd Cir. 1982) *cert. denied*, 461 U.S. 942 (1983), *reh. denied*, 463 U.S. 1236 (1983).

Judicial acknowledgment of legislative compromise is dictated by the realities of the legislative process itself, a process which often precludes attribution of a single intent to the legislature:

> [S]tatutes often are the product of compromise between opposing groups and . . . a compromise is unlikely to embody a single consistent purpose . . . [w]here the lines of compromise are discernible, the judge's duty is to follow them, to implement not the purposes of one group of legislators but the compromise itself.

Richard A. Posner, *The Federal Courts: Crisis and Reform* 289 (Harvard: 1985).

> Focusing on the purpose of legislation is surely a legitimate element of statutory interpretation. Nonetheless, this exercise often proves to be difficult because legislatures rarely act with a single purpose. Where statutes reflect, as they frequently do, both explicit and implicit compromises among competing considerations, our use of policy must be wary and cautious. To do otherwise risks upsetting the balance struck by Congress among competing goals. Nor should courts accept a sly invitation to achieve an end for which Congress could not muster the votes.

Lauritzen v. Lehman, 736 F.2d 550, 556 (9th Cir. 1984). *Accord, Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 373-374 (1986).

But judicial respect for legislative compromise is counseled not only by prudential principles of sound statutory construction, but also by the constitutional requirement of separation of powers:

> We would be indulging in a revisory power over enactments as they come from Congress—a power which the Framers of the Constitution withheld from this Court—if we interpreted . . . what in fact Congress did . . . "So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene . . ."

Communist Party v. S.A.C. Board, 367 U.S. 1, 85-86 (1961) (citations omitted). Thus, judicial revision of Congressional enactments constitutes an invasion of the power which the Framers entrusted to the legislative branch:

> Our system of government is, after all, a tripartite one, with each branch having certain defined functions delegated to it by the Constitution. While "[i]t is emphatically the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 1 Cranch 137, 177 (1803), it is equally—and emphatically—the exclusive province of the Congress not only to formulate legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.
>
> * * * *
>
> Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power to veto. The lines ascribed to Sir Thomas More by Robert Bolt are not without relevance here:
>
> > "The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal. . . . I'm *not* God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager. But in the thickets of the law, oh there I'm a forester . . . What would you do? Cut a great road through the law to get after the Devil? . . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? . . . This country's planted thick with laws from coast to coast —Man's laws, not God's—and if you cut them down . . .d'you really think you could stand upright in the winds that would blow then? . . . Yes, I'd give the Devil benefit of law, for my own safety's sake." R. Bolt, *A Man for All Seasons*, Act I, p. 147 (Three Plays, Heinemann ed. 1967).
>
> [I]n our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with "common sense and the public weal." Our Constitution vests such responsibilities in the political branches.

TVA v. Hill, 437 U.S. 153, 194-5 (1978). Judicial application of the compromises enacted by Congress is therefore a necessary corollary to the separation of powers:

> [W]e consistently have emphasized that the federal lawmaking power is vested in the legislative, not the judicial, branch of government; therefore, federal

common law is "subject to the paramount authority of Congress".

* * * *

Although equitable considerations strongly supported a nonliteral reading of the statutory provisions . . . we concluded that we had a duty to "respect the compromise embodied in the words chosen by Congress".

Northwest Airlines v. Transport Workers, 451 U.S. 77, 95, 98 (1981) (citations omitted). *See also, Thompson v. Thompson*, 484 U.S. 174, 188 (1988) (concurrence of Justice Scalia); *Judicial Modification of Statutes: A Separation Of Powers Defense Of Legislative Inefficiency*, 4 Yale L. & Pol'y. Rev. 228 (1985).

In this connection, judicial disregard of legislative compromise must also be rejected as fundamentally anti-democratic, a usurpation of the power which the Framers granted the popularly elected representatives of the people:

Judicial seizing upon a single Congressional goal and transmogrifying that desire into the measuring rod against which to measure agency fidelity to supplied legislative norms poses obvious anti-democratic dangers. In plain English, it may distort the legislative process. The upshot of "purpose-driven" interpretive methodologies is that carefully wrought compromises on Capitol Hill may be torn asunder in federal courthouses. Losers in the Congress (or more precisely, partial winners who may view themselves as losers) may find themselves ultimate victors by eschewing the democratic process and instead entering the litigation arena.

* * * *

To be sure, we are faced in the precincts of *Chevron* Step Two analysis with ambiguous legislative materials, not the clarity of statutory expression found by the Court in *Dimension Financial*. But the anti-democratic danger still exists, especially since ambiguity may well be the deliberate result of competing and warring legislative forces striving to

achieve essentially incompatible results in a single piece of legislation (or simply to minimize "losses"). It therefore will not do, when interpreting a statute embodying conflicting demands, for courts grandly to resort to a single "broad purpose" of a statute and then employ a judicially idealized "goal" to drive the interpretive process. To do so may represent . . . revisionist interpretations of a specific legislative measure . . .

Continental Air Lines v. Department of Transportation, 843 F.2d 1444, 1450-1451 (D.C. Cir. 1988).

The court below justified its disregard of the Congressional compromise by finding its application to the facts of the case inconsistent with the general purpose of the Act—enunciated in the preamble—to provide benefits to those totally disabled due to pneumoconiosis "arising out of" coal mine employment. *Bethenergy Mines, Inc. v. Director, OWCP*, 890 F.2d at 1300 referencing language at 30 U.S.C. § 901(a). But this flies in the face of this Court's ruling in *Turner Elkhorn* which specifically acknowledged the fact that certain other portions of the Act *do* bar rebuttal on grounds of disability causation notwithstanding the coexistence of this language at § 901 (a). *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 34-35 (1976).

Moreover, it disregards this Court's injunction in *Dimension Financial* and *Rodriguez* disapproving judicial invocation of the broad purposes of legislation to repeal specific statutory provisions:

Application of "broad purposes" of legislation at the expense of specific provisions ignores the complexity of the problems Congress is called upon to address and the dynamics of legislative action. Congress may be unanimous in its intent to stamp out some vague social or economic evil; however, because its Members may differ sharply on the means for effectuating that intent, the final language of legislation may reflect hard-fought compromises. Invocation of the "plain purpose" of legislation at the expense of

> the terms of the statute itself takes no account of the processes of compromise and, in the end, prevents the effectuation of congressional intent.

Board of Governors v. Dimension Financial Corp., 474 U.S. 361, 373-374 (1986).

> [N]o legislation pursues its purpose at all costs. Deciding what competing values will or will not be sacrificed is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law.

Rodriguez v. United States, 480 U.S. 522, 525-526 (1987) (emphasis in original).

Indeed, this Court has specifically rejected the proposition that the broad purposes of an act can be judicially construed to alter the compromises struck by Congress:

> Radical reinterpretations of the statutory phrase . . . are said to be necessary in order to effectuate a broad policy, found to be underlying the Criminal Appeals Act, that this Court review important legal issues. The axiom that courts should endeavor to give statutory language that meaning that nurtures the policies underlying legislation is one that guides us when circumstances not plainly covered by the terms of statute are subsumed by the underlying policies to which Congress was committed. Care must be taken, however, to respect the limits up to which Congress was prepared to enact a particular policy, especially when the boundaries of a statute are drawn as a compromise resulting from the countervailing pressures of other policies. Our disagreeing Brothers, in seeking to energize the congressional commitment to review, ignore the subtlety of the compromise that limited our jurisdiction, thereby garnering the votes necesssary to enact the Criminal Appeals Act.
>
> In this regard, the legislative history reveals a strong current or congressional solicitude for the plight of a criminal defendant exposed to additional expense and

> anxiety by a government appeal and the incumbent possibility of multiple trials. Criminal appeals by the Government "always threaten to offend the policies behind the double-jeopardy prohibition . . . even in circumstances where the Constitution itself does not bar retrial. Out of a collision between this policy concern, and the competing policy favoring review, Congress enacted a bill that fully satisfied neither the Government nor the bill's opponents. For the Criminal Appeals Act, thus born of compromise, manifested a congressional policy to provide review in certain instances but no less a congressional policy to restrict it to the enumerated circumstances.
>
> Were we to throw overboard the ballast provided by the statute's language and legislative history, we would cast ourselves adrift, blind to the risks of collision with other policies that are the buoys marking the safely navigable zone of our jurisdiction.

United States v. Sisson, 399 U.S. 267, 297-299 (1970) (citations omitted). *Accord, Continental Air Lines v. Department of Transportation*, 843 F.2d 1444, 1451 (D.C. Cir. 1988). This Court recently reaffirmed this principle in the *Bowsher* case:

> It does not follow . . . from the fact that the . . . amendment was a compromise that the . . . language is to be given no effect at all . . . [A] majority voted for the . . . amendment, and we must give weight to the expressed will of a legislative majority.

Bowsher v. Merck & Co., 460 U.S. 824, 835 n.10 (1983).

As the U.S. Court of Appeals for the Seventh Circuit has explained, relying on broad purposes to construe statutory language ignores the fact that Congress also contemplates the reach of the law to stop at *some* point:

> Congress always has some objective in view when it legislates, and it is always possible to move a little farther in the direction of the objective. The fact that Congress has pointed in a particular direction

> does not authorize a court to march in that direction without limit. The language and the structure of the statute establish how far to go. We honor the decision of Congress by choosing stopping points no less than by achieving more of the ultimate end in view.

Mercado v. Calumet Federal Sav. & Loan Ass'n., 763 F.2d 269, 271 (1985); *Accord, United States v. Sisson*, 399 U.S. 267, 298 (1978). *See also Burlington Northern R.R. v. B.M.W.E.*, 793 F.2d 795, 803 (7th Cir. 1986), *cert. dism.*, 476 U.S. 1179 (1986) ("When Congress writes the rule, courts may not transmute the statute . . . by inventing new rules to pursue the goal Congress had in mind"); *United States v. Medico Industries, Inc.*, 784 F.2d 840, 844 (7th Cir. 1986) ("When Congress chooses the rule . . . a court must turn aside claims that . . . conduct [prohibited by the rule] does not undercut the legislature's objective and therefore should be permitted").

The decision below also disregards virtually every maximum of sound statutory interpretation. It ignores the long-established precept of statutory interpretation that language in a preamble cannot control language in the purview, or body, of the Act. Sutherland, *Statutory Construction* (4th ed. 1984) § 47.04; *Beard v. Rowan*, 9 Pet. (34 U.S.) 301, 317 (1835); *Coosaw Min. Co. v. South Carolina*, 144 U.S. 550 (1892); *Price v. Forrest*, 173 U.S. 410, 428 (1899). It abrogates the principle that amendments, like § 902(f)(2), repeal the effect of the original language to the extent they are irreconcilable. Sutherland, *Statutory Construction* § 22.32; *Norris v. Crocker*, 13 How. 429 (U.S. 1851); *U.S. v. Tynen*, 11 Wall 88 (U.S. 1870). And it violates the precept that specific provisions—like § 902(f)(2) here—prevail over general ones—like § 901(a). *Fourco Glass Co. v. Transmission Corp.*, 353 U.S. 222, 228-229 (1957).

If the courts were charged with reinterpreting plain text of statutes in accordance with the purposes set forth

in their preamble, they would be hopelessly and eternally embroiled in a vain quest to divine a single legislative intent where none exists. *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 374 (1986); *Lauritzen v. Lehman*, 736 F.2d 550, 556 (9th Cir. 1984).

But, fundamentally, this is not a case about conflicting maxims of statutory construction. For the decision below is much more than that, it is an attack on the legislative compromise in which Congress chose to give a limited category of claimants the right to invoke presumptions of eligibility with the benefit of only limited rebuttal, in exchange for giving industry broader rebuttal rights for future claimants.

It may also be important to note that the fact that the agency charged with administering the statute disagrees with the approach Congress enacted is insufficient to warrant judicial disregard of specific statutory provisions:

> [W]here a statute strikes a political balance but administration of the statute is entrusted to an agency that may not embody that balance, it is dangerous to defer automatically to the agency's view. An agency that may be dominated by one faction in the legislative struggle that led to enactment of a compromise is not authorized to hand that faction a victory that was denied it in the legislative arena through the efforts of another faction. The court must enforce the compromise, not the maximum position of one of the interest groups among which the compromise was struck.

Bethlehem Steel Corp. v. U.S.E.P.A., 723 F.2d 1303, 1309 (7th Cir. 1983). So are any fragments of legislative history offered up in defense of the decision below:

> Discarding the plain language of a statute in favor of committee reports or other legislative history ignores the realities of the legislative process. The crafting of specific language often reflects legislative compromise reached after hard fought battles

over the means to reach even common goals. Courts should only reluctantly turn to legislative history for fear of upsetting the delicate balance reflected in a finally worded piece of legislation.

Trustees of Iron Workers v. Allied Products, 872 F.2d 208, 213 (7th Cir. 1989) *cert. denied*, 110 S.Ct. 143 (1989). *Accord, International Union, UAW v. General Dynamics*, 815 F.2d 1570, 1575-1576 (D.C. Cir. 1987) *cert. denied*, 484 U.S. 976 (1987).

CONCLUSION

The judgment of the Court of Appeals for the Third Circuit should be reversed and remanded with directions to award the petitioner here benefits.

Respectfully submitted,

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